IV-16

SAN JUAN

ALLIANCE

October 10, 2006

VIA E-MAIL ATTACHMENT/CERTIFIED MAIL

Mr. Robert Baker
Air-3
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
E-mail: baker.robert@epa.gov

Dear Mr. Baker:

On behalf of the hundreds of members of the San Juan Citizens Alliance that live, work, and recreate in the Four Corners region, I want to thank you for the opportunity to provide testimony during public hearings on EPA's Draft Prevention of Significant Deterioration ("PSD") permit for the proposed Desert Rock Power Plant held on October 3 and 4, 2006.

As I hope became clear to the agency during public testimony, the Four Corners area, and San Juan Basin in particular, is already subject to degraded air quality with associated and adverse public health impacts. Our community is currently saddled with a legacy of pollution from the Four Corners Power Plant, the San Juan Generating Station and tens of thousands of existing and projected natural gas wells in the Four Corners region. Absent significant offsets and/or zero emissions from the proposed plant, Desert Rock Power Plant is certain to exacerbate health and environmental problems throughout the region.

That said, and as already expressed during public testimony, the San Juan Citizens Alliance respectfully requests that EPA immediately, and at a minimum, undertake the following measures in preparation of the Draft PSD permit for the proposed Desert Rock Power Plant:

(1) As already requested by Congressman John Salazar, the comment period for the Draft PSD permit for the Desert Rock Power Plant must be extended to match the public comment period for the final Environmental Impact Statement ("EIS") for the Desert Rock Power Plant. EPA is currently a cooperating agency and is assisting in the EIS process with a focus on air quality and solid waste disposal issues. Thus, the San Juan Citizens Alliance does not foresee that synchronizing the EIS and Draft PSD comment period would be at all problematic for the agency; and,

106 S. Main Avenue
Suite A
PO Box 87
Aztec, NM
87410

505.334.1301
505.334.5518

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(2) In the interim (and while the public awaits the release of the Desert Rock EIS), the EPA should supplement data for the Draft PSD permit to include emissions from natural gas facilities in the region and a minimum of 1-year of on-site monitoring data. Based on EPA's statements to the media, and in particular statements by EPA's Colleen McKaughan, it is apparent that EPA agrees with the public that the baseline air quality data and analysis used for the Draft PSD permit for the proposed Desert Rock Power Plant is deficient. Thus, EPA should work to supplement the information provided to the public and the current modeling analysis.

The public deserves a thorough analysis of all impacts that would result from the proposed Desert Rock Power Plant. The Four Corners region cannot afford streamlined analyses of a massive coal-fired power plant when the cumulative results would adversely affect already degraded air quality.

Given the swiftly approaching deadline for public comment on the Draft PSD permit for Desert Rock, I'm hopeful you will provide a decision on this request within five (5) business days. Please don't hesitate to contact me at (505) 360-8994 if you have any questions.

Sincerely,

Mike Eisenfeld

Mike Eisenfeld
New Mexico Staff Organizer

cc: Honorable Congressman John Salazar
Honorable Congressman Tom Udall
Wally White, La Plata County Commissioner
Brad A. Bartlett, Managing Attorney, Energy Minerals Law Center

106 S. Main Avenue
Suite A
PO Box 87
Aztec, NM
87410

505.334.1301
505.334.5518

San Juan Citizens Alliance

A voice for environmental, social, and economic justice in the San Juan Basin of southwest Colorado and northwest New Mexico

New Mexico Chapter
108 North Behrend, Suite I
Farmington, NM 87401
Ph: 505-325-6724
New Mexico Office Cell: 505-360-8994

November 10, 2006

VIA E-MAIL ATTACHMENT/CERTIFIED U.S. MAIL

Mr. Robert Baker
Air-3
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, California 94105
e-mail: baker.robert@epa.gov

Re: Comments for Proposed Desert Rock Energy Facility Clean Air Act Draft Prevention of Significant Deterioration Permit

Dear Mr. Baker:

The San Juan Citizens Alliance (SJCA) New Mexico Chapter respectfully submits the following comments concerning the proposed Sithe Global Power, LLC (Sithe) Desert Rock Energy Facility (Desert Rock) Clean Air Act (CAA) Draft Prevention of Significant Deterioration (PSD) permit. The proposed Desert Rock project is the construction and operation of a 1,500 Megawatt (MW) coal-fired power plant and ancillary infrastructure to be located in Burnham on Navajo Nation lands on a 580-acre facility, approximately 30 miles southwest of Farmington, New Mexico.

SJCA New Mexico Chapter is a community membership non-profit organization. SJCA is actively involved with energy development issues in the San Juan Basin and has considerable concerns regarding existing and projected air quality in the Four Corners region.

As documented in testimony presented to the EPA Region 9 on October 3 and 4, 2006 in Shiprock, New Mexico and Durango, Colorado, SJCA has noted significant deficiencies with the Draft PSD permit, as currently prepared. This purpose of this letter is to provide additional information supporting SJCA testimony (PowerPoint presented during public hearings October 3 and 4, 2006) on the EPA's Draft PSD permit for the proposed Desert Rock facility. This comment letter also responds to EPA Region 9's initial denial of the SJCA request to extend the comment period on the Draft PSD permit and the EPA view that the National Environmental Policy Act (NEPA) process is "separate from the PSD permitting process." (letter from Gerardo Rios, Chief, Air Permits Office, Region 9, EPA to SJCA, October 20, 2006)

SJCA strongly objects to the fact that Sithe has had documented communication with EPA Region 9 to attempt to expedite the Draft PSD permit for Desert Rock.[1] The Four Corners region cannot afford streamlined analyses of a massive coal-fired power plant when the cumulative results would adversely affect already degraded air quality. EPA Region 9 needs to slow down and re-prepare the Draft PSD permit for Desert Rock with accurate monitoring and modeling inputs, a better understanding of existing air quality conditions in the Four Corners region, and full disclosure to the public of all facets of the proposed Desert Rock facility.

The EPA's refusal to hold a public hearing for the Draft PSD permit in Farmington (the largest population potentially affected by the proposed project) to cut costs, as described to SJCA staff by Colleen McKaughan of the EPA at the public information meeting in Burnham, September 13, 2006, is an affront to the citizens of northwestern New Mexico.

Comments in the local media by the EPA, attributed to Colleen McKaughan, include, "We're not moving backwards," she said. " The air here is considerably clean. It doesn't violate any of the national air-quality standards." In addition, the article included the statement that "…the two existing power plants in northwest New Mexico - Four Corners Power Plant and San Juan Generating Station - are improving their emissions… and a new power plant will use the best technology to reduce emissions." [2] How would the EPA Region 9 know, given the poor monitoring data used in evaluation of the Draft PSD permit and the complete failure to include cumulative existing air pollution sources used for modeling analysis? This statement "…air here is considerably clean" is unsubstantiated by valid existing data and results in perpetuating the mythic assertion that it's okay to pollute in the "pristine" Four Corners region where populations are low and consist of a high proportion of minority populations; and it's a great place to generate power to be transported elsewhere. Perhaps EPA Region 9 is unaware of the ozone problem in San Juan County. The Four Corners region has a long legacy of air pollution from the massive complex of coals mines, coal delivery systems and the two major coal-fired power plants (Four Corners Power Plant and San Juan Generating Station) located in the Shiprock area.

Four Corners citizens are tired of hearing that Desert Rock would be a "clean" coal-fired power plant and are understandably concerned that EPA Region 9 has demonstrated limited knowledge of the proposed project area and region. The Four Corners region has waited many years for the San Juan Generating Station and Four Corners Power Plant to "reduce" their emissions. Up to

[1] January 30, 2006 e-mail from Gus Eghneim, Desert Rock's director of environmental affairs, to Colleen McKaughan, EPA Associate Director, Air Division.
[2] "Critics blast power plant," Durango Herald, October 4, 2006

13.7 million tons per year (tpy) of carbon dioxide (CO2) would be emitted by the proposed Desert Rock facility – this massive power plant would emit almost as much CO2 as the Four Corners Power Plant and more than the San Juan Generating Station. What are the "best technologies" that Sithe would utilize in emitting up to 13.7 million tpy of CO2? The proposed Desert Rock facility is yet another coal-fired power plant: proposed to be irresponsibly located with inadequate analysis. The Dine Power Authority stated at the Public Hearing in Shiprock, October 4, 2006 that 0-5% of the power generated by the proposed Desert Rock facility would stay on the Navajo Reservation to be utilized by the Navajo people. Pollute here and use the power elsewhere.

I. DEFICIENCIES OF THE DRAFT PSD PERMIT FOR THE PROPOSED DESERT ROCK FACILITY

1. Background Ambient Air Quality Data

Sithe used monitors in Farmington, New Mexico (22-24 kilometers [km] from the proposed project site) for sulfur dioxide (SO2), nitrogen oxides (NOx), particulate matter smaller than 10 micrometers diameter (PM10), and ozone, and Rio Rancho, New Mexico (136 km from the proposed project site) for carbon monoxide (CO) to determine background concentrations of pollutants in the modeling for Desert Rock. According to the Ambient Air Quality Impact Report (NSR 4-1-3, AZP 04-01), "the EPA has determined that these monitors will record higher background concentrations of pollutants than we would expect closer to the DREF (Desert Rock) site is because Farmington and Rio Rancho have greater residential and commercial activity than the project site on the Navajo Nation." This is deficient methodology that neglects analysis of the major sources of air pollution in the Four Corners region.

There are no monitors in the proposed project area or immediate vicinity. At an early ozone meeting in Farmington (April 23, 2002) the New Mexico Environmental Department/Air Quality Bureau (NMED/AQB) was asked the following question, "**Can the AQB monitor near the Navajo Nation?" The answer:** "AQB used to have a site called "Reservation" that was located on the Navajo Reservation, approximately 1 mile NNW of the APS Four Corners power plant and 5 miles SW of the PNM San Juan power plant, where it measured SO2 and NO2 concentrations. That site was shut down in 1994 because of vandalism and because tribal authorities took over responsibility for that area. A monitoring site outside of Shiprock, which measured SO2 and PM10, was closed in 1998. When they were in operation, these sites did not show very high values of the pollutants they were measuring." [3] It is highly likely that monitors in these sites would paint a different air quality picture today.

The EPA should reinitiate monitoring, for example, on the northern portion of the Hogback where more accurate assessments could be made concerning the pollution from the two existing power plants and cumulative air quality impacts. The lack of monitors in appropriate locations results in inaccurate modeling for the Draft PSD permit for the proposed Desert Rock facility. Several years of monitoring in appropriate locations would give EPA Region 9 the information needed for modeling.

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[3] http://www.nmenv.state.nm.us/aqb/projects/Ozone-QandA.html

2. Analysis of Impacts on Ozone Concentrations

The EPA Region 9 should be aware of the San Juan County Early Action Compact (EAC) for ozone. San Juan County, the Cities of Aztec, Bloomfield, and Farmington, the NMED, and the EPA signed the EAC on December 20, 2002. The EAC entails milestones over the next several years that are designed to keep San Juan County in attainment of the federal standard for ground-level ozone. Through its air monitoring program, NMED has in recent years recorded levels of ozone that approach, but have not exceeded the ozone standard in San Juan County. As a result of the EAC, the New Mexico Ozone Task Force and the Four Corners Air Quality Task Force have been working over the past 5 years to develop strategies to stay in attainment for ozone and other air pollution emissions. These EAC strategies include an inventory of ozone precursor emissions in San Juan and Rio Arriba counties over a two-year period. This inventory must be complete for action to be taken on ozone precursor emissions reduction, providing cumulative impact analysis. The goal of the EAC is to maintain San Juan County compliance with the 8-hour ozone National Ambient Air Quality Standards (NAAQS) through 2007.

The Draft PSD permit for the proposed Desert Rock facility includes no analysis of ozone concentrations. EPA is required to include one year of on-site preconstruction monitoring of ozone concentrations at the proposed Desert Rock site. This has not occurred to date for the Draft PSD permit. The proposed Desert Rock facility would have the potential to emit 166 tpy of volatile organic compounds (VOCs) and 3,315 tpy of NOx. These precursors could exacerbate existing air pollution levels, in conjunction with other sources (including natural gas facilities and automobiles) in San Juan County and cause a violation of the NAAQS for ozone.

EPA's failure to include ozone concentrations in the Draft PSD permit is a major deficiency, representing an inaccurate baseline of existing air quality conditions in the Four Corners region. The Bureau of Land Management (BLM) Farmington Field Office (Farmington) Resource Management Plan (RMP) of 2003 documents the emission of 72,000 tpy of NOx and 3,000 tpy of VOCs over the next 20 years in the Four Corners region as a result of new natural gas development. This more than doubles the combined existing NOx emissions from the San Juan Generating Station (26,800 tpy) and the Four Corners Power Plant (40,742 tpy).

EPA has the legal obligation to revise the Draft PSD permit to evaluate ozone precursor emissions from the proposed Desert Rock facility, evaluate cumulative ozone levels in the Four Corners, and determine public health impacts as a result of the proposed Desert Rock facility in conjunction with existing air pollution sources.

3. Analysis of Impacts from Fugitive Dust

The Draft PSD permit discusses how the proposed Desert Rock facility will avoid fugitive dust emissions as a mine-mouth power plant through the use of dust suppression systems, enclosures and/or fabric filters. This needs to be explained by the EPA in more detail in the proposed PSD permit as to the mining systems, length of the proposed enclosed conveyors, the amount of coal being conveyed and the method of "recycling' the coal combustion wastes into Navajo Mine. Again, the impacts of fugitive dust from the proposed Desert Rock facility are potentially part of the larger, cumulative impacts associated with the massive existing complex of coal extraction,

delivery, pulverization, burning, waste disposal that have occurred over the past 40 years in the area from the BHP Billiton (BHP) mines and the two existing power plants. The area proposed for coal mining for the proposed Desert Rock facility would be subject to subsidence, with commensurate sediment transfer and fugitive dust. Information provided to date is that the mining of up to an additional six million tpy of Navajo coal from the BHP Navajo Coal Company lease area (Areas IV South and V) would be required for the proposed Desert Rock facility. The Draft PSD permit discussion of Material Handling Sources for particulate matter represents a significant departure from accepted practices in the area (open recycling into excavated coal mines) that have led to large amounts of fugitive dust in the Burnham region. EPA Region 9 needs to revise the entire section on fugitive dust in the Draft PSD permit.

4. Fine Particulate Matter (PM2.5) Omitted for the Draft PSD Permit

Sithe failed to properly analyze fine particulate (PM2.5) concentrations in the Draft PSD permit. EPA Region 9 must adhere to PM2.5 ambient air quality standards as revised by EPA on September 21, 2006 and must correlate all analysis/modeling impacts from the proposed Desert Rock facility with public health analysis in the Four Corners region. PM2.5 is entirely distinct from PM10 and cannot be treated as a surrogate. EPA 9 has failed to determine the amount of PM2.5 that would be emitted by the potential Desert Rock facility. In addition, EPA Region 9 must accurately characterize fugitive dust emissions from all facets of the construction and operation of the proposed Desert Rock facility (including all mining operations) to evaluate potential PM2.5 emissions.

5. Inaccurate modeling and use of unenforceable mitigation to avoid visibility and deposition impacts on Class 1 areas in the Southwestern U.S.

The Draft PSD permit includes flawed modeling that led to the conclusion that adverse visibility and deposition impacts in eleven Class 1 areas would not occur as a result of the proposed Desert Rock facility. The EPA Region 9 failed to properly evaluate cumulative air pollution in the Four Corners region in the modeling of the proposed Desert Rock facility.

The Draft PSD requires involvement of Federal Land Managers (FLMs) including the United States Department of Agriculture- Forest Service (USDA-FS), and Department of Interior - National Park Service (NPS). Glaringly absent from this FLM involvement is the BLM, an agency that has a huge responsibility to protect the Four Corners public from air pollution as a result of approved actions (primarily natural gas facilities) and oversees the leasing of the BHP mines. Initial modeling of the proposed Desert Rock facility showed that adverse visibility impacts would occur at numerous Class I areas including Mesa Verde National Park. Sithe then worked with the Navajo Nation, the EPA and FLMs to develop a mitigation plan to preclude an adverse impact determination being made for the proposed Desert Rock facility. In response to the request of the FS to include the mitigation plan in Sithe's PSD permit so that Sithe's proposal would be federally enforceable, the EPA Region 9's "…preference is to allow the mitigation strategy to remain in a side agreement between Sithe and FLMs rather than in Sithe's PSD permit." [4] Without any details to the public concerning the mitigation plan, permit conditions

[4] USEPA Ambient Air Quality Impact Report (NSR 4-1-3, AZP 04-01), page 38

and timeframes, and the lack of any federally enforceable measures to offset impacts to visibility and deposition, the EPA Region 9 has not shown that adverse impacts determination to Class I areas will not occur as a result of the proposed Desert Rock facility. The EPA Region 9 needs to include federally enforceable conditions related to the proposed Desert Rock facility in the Draft PSD permit or they are entirely unenforceable. The EPA Region 9 must come to the realization that air quality in the Four Corners region is already severely degraded and they are responsible for public health protection in potential issuance of a PSD permit. The last thing this region needs is unenforceable mitigation strategies for air pollution shuffled form agency to agency, with none taking action on air quality and public health.

6. Greenhouse Gas Emissions Analysis

Perhaps the greatest known impact to date for the proposed Desert Rock facility would be emissions of up to 13.7 million tpy of CO2 in conjunction with other greenhouse gasses. EPA's Ambient Air Quality Impact Report for the proposed Desert Rock Draft PSD permit neglects to include greenhouse gas emissions from the proposed Desert Rock facility. There is absolutely no analysis of the environmental impact from greenhouse emissions nor any consideration of best available control technology (BACT) to minimize CO2 emissions. What will be the public health and economic costs to the Four Corners region as a result of 13.7 million tpy of CO2 added to the already compromised airshed? The EPA Region 9 should be aware that the State of New Mexico has established statewide greenhouse gas emission reduction goals. EPA Region 9 should begin consultation with the State of New Mexico to evaluate how the proposed Desert Rock facility emission of 13.7 million tpy of CO2 fits in the state's reduction goals. In addition, EPA Region 9 should work with the Navajo Nation to explain how impending carbon taxes have the potential to wipe out financial benefit of the proposed Desert Rock facility from the tribe.

7. Emission Limits for Mercury

The Draft PSD permit for the proposed Desert Rock facility proposes no emission limits for mercury. The failure of the EPA Region 9 to include mercury emission limits means that the proposed Desert Rock facility emission limits would have no enforceable limits and mercury emissions would be potentially much higher than the 264 pounds per year of mercury emissions described in the Draft PSD permit. Data from the EPA's Persistent Bioaccumulative and Toxic (PBT) Chemical Program website provides year 2000 total mercury emissions from the Four Corners Power Plant (1,174 pounds) and San Juan Generating Station (1,194 pounds). This emitted mercury is showing up as mercury deposition in virtually all of the major water bodies in the Four Corners region. These regional waters include the San Juan, Animas, La Plata rivers; Navajo and Vallecito lakes; Narraguinnep and McPhee reservoirs, and numerous water bodies found on the Navajo Nation where fish consumption advisories due to mercury contamination have been issued. The EPA Region 9 must analyze mercury emissions and controls from the proposed Desert Rock facility prior to issuing the PSD permit. In addition, EPA Region 9 should conduct analyses of water, soils and vegetation in a 100-mile radius of the existing massive coal power complex (including San Juan Generating Station, Four Corners Power Plant, and Navajo Mine) to determine mercury uptake by livestock and humans, and wildlife as a result of power plant emissions.

8. Environmental Justice Provision in Ambient Air Quality Impact Report

Compliance with Environmental Justice, including Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," is required for issuance of the PSD permit, where issues of concern include, "Disproportionate exposure to pollutants, potential health problems (respiratory, heavy metals in fish)."

"EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies." EPA continues on with…."the EPA expects that these issues will be addressed during the NEPA process." [5] Environmental Justice issues for the EPA to evaluate, as a result of the proposed Desert Rock facility, include disproportionate adverse health impacts on low-income and minority populations, loss of grazing rights by Navajo tribal members, displacement of citizens for siting of the power plant, and the lack of current monitors in place to provide accurate assessments of air quality in the eastern Navajo Nation area. The EPA expects to defer this to the separate NEPA process, yet the information needed to make a determination on Environmental Justice issues is required for evaluation of the Draft PSD permit.

Environmental Justice is an integral responsibility of EPA Region 9 in evaluating the Draft PSD permit for the proposed Desert Rock facility. Environmental Justice applies to a larger geographical region than the EPA Region 9 has identified in the Draft PSD permit for the proposed Desert Rock facility. "Fair treatment and meaningful involvement" may have different connotations to the EPA in evaluating Environmental Justice. To SJCA, this means involving all communities within the Four Corners region and the multitude of communities that continue to be adversely impacted by air pollution and human rights violations. A recent document by EPA Office of Inspector General states the following:

> Our survey results showed that EPA program and regional offices have not performed environmental justice reviews in accordance with Executive Order 12898. Respondents stated that EPA senior management has not sufficiently directed program and regional offices to conduct environment justice reviews. Also, respondents expressed a need for further guidance on conducting these reviews, including protocols, a framework, or additional directions. Until these program and regional offices perform reviews, the Agency cannot determine whether its programs cause disproportionately high and adverse human health or environmental effects on minority and low-income populations.[6]

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[5] USEPA Air Quality Impact Report, NSR 4-1-3, AZP 04-01, pages 46-47

[6] Evaluation Report: EPA Needs to Conduct Environmental Justice Reviews of its Programs, Policies and Activities (Report No. 2006-P-00034) September 18, 2006

Additionally, EPA regulations specifically prohibit the air program from,

> choos[ing] a site or location of a facility that has the purpose or effect of … subjecting [individuals] to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.
>
> [Or]
>
> use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.[7]

EPA has failed to comply with these requirements in the issuance of its Draft PSD permit for the Desert Rock facility. Public health has not been properly evaluated or secured for citizens of the Four Corners region in regards to air pollution (and in particular, local tribal communities). High incidences of asthma and other respiratory illnesses are prevalent in the Four Corners region. In complying with Executive Order 12898, SJCA requests that EPA Region 9 include the following data collection and evaluation of regional health impacts such as asthma, cancer, stroke, and premature death (due to existing air pollution) in the Draft PSD permit analysis:

- A complete respiratory health analysis of the communities surrounding the existing San Juan Generating Station, the existing Four Corners Power Plant, and the proposed Desert Rock power plant, including but not limited to: Sanostee, Burnham, Huerfano, Nageezi, Shiprock, Toadalena, Fruitland, Kirtland, Farmington, Aztec, Bloomfield, Durango, Ignacio, Bayfield, Crownpoint, Cortez, Red Mesa, and Aneth. This analysis must include:
  (1) Asthma levels in all age groups and a comparison with areas of similar populations.
  (2) Correlation of hospital visits with air quality.
  (3) A complete analysis of whether respiratory health problems are similar for different ethnic and / or cultural groups within the region.
  (4) Comparison of prevalence of respiratory health rates with areas of similar populations.

- An analysis of regional autism levels, and a comparison with areas of similar populations.

- An analysis of cancer and stroke rates, and a comparison with areas of similar populations.

[7] 40 CFR §7.35(b)

9. National Historic Preservation Act (NHPA) compliance in Ambient Air Quality Impact Report

The EPA Region 9 has not provided the public with necessary information to prove compliance with Section 106 of the NHPA. In the Ambient Air Quality Impact Report, the EPA states:

> As a follow up to initial contact, the applicant is prepared to work with the BIA in consulting with the Navajo Nation THPO (Tribal Historic Preservation Office) about defining the area of potential effect, identifying other potentially interested parties who should be involved in the consultations, and developing an appropriate strategy to inventory and evaluate cultural resources that could be affected.

This is unacceptable. The EPA should have complete Class III cultural resource survey results in hand for the entire proposed Desert Rock facility prior to any decision being made on the Draft PSD permit for the Desert Rock facility. It is SJCA's understanding that the EPA is accepting a 1977 survey of the proposed project area as the basis for evaluating compliance with Section 106 of the NHPA. How many burial sites, cultural resources (including a Navajo pueblito) and significant traditional cultural properties are in the proposed project area? The EPA cannot evaluate compliance with Section 106 without a current Class III cultural resources inventory and analysis of the entire proposed Desert Rock facility.

10. Endangered Species Provision of Ambient Air Quality Impact Report

The on-site and off-site impacts to vegetation, soils, wildlife, fish, endangered, threatened, or sensitive species, migratory birds, and ecologically sensitive habitats as a result of air quality emissions must be analyzed over the life of the proposed Desert Rock facility for the Draft PSD permit. This analysis must include impacts caused by the power plant, access roads, transmission lines, conveyors, coal mining, and any other aspect of the proposed Desert Rock facility. A specific provision of the Draft PSD permit is compliance requirements with Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536 and its implementing regulations at 50 CFR § 402. The EPA has determined that this PSD permitting action triggers ESA Section 7 consultation requirements where the EPA is required to consult with the United States Fish & Wildlife Service. This consultation process indicates to the public that there are endangered and/or threatened species in the proposed project area. From the Ambient Air Quality Impact Report,

> When a Federal action involves more than one agency, consultation and conference responsibilities may be fulfilled through a lead agency pursuant to 50 CFR § 402.07. Since the land, electric transmission lines, and access roads required for the proposed project are located on the Navajo Indian Reservation and lands under the jurisdiction of the Bureau of Indian Affairs (BIA), the BIA will act as the lead Federal agency for purposes of fulfilling the responsibilities under Section 7 of the ESA for the project.

It is highly improbable that the Draft PSD permit includes adequate information for the EPA concerning the proposed Desert Rock facility and range of alternatives (in development of a Preferred Alternative) that the BIA is evaluating in the DEIS to evaluate impacts to endangered species and determine compliance with the ESA. This is another example of the Draft PSD permit being rushed, while information provided to the public is inadequate. Perhaps a response from EPA Region 9 is in order at this point, relating to the public which specific endangered species will be impacted, the extent to which they will be impacted and how the EPA intends to comply with the ESA (in association with the Lead and cooperating agencies involved in the EIS).

The EPA, by law, cannot issue the final PSD permit until the conclusion of the Section 7 consultation, the USFWS issuance of the Biological Opinion for the Preferred Alternative and consistency review with ESA requirements.

11. Cumulative Air Quality Impacts in the Four Corners Region

The EPA's Desert Rock Clean Air Act Proposed Permit Overview includes the following statement:

> US EPA has reviewed extensive computer modeling studies that predict the effect of the plant on air quality. Total outdoor air pollution levels are determined by adding the impacts from this project to the total levels of pollution expected from all other existing sources combined.

Given the known air quality issues in the Four Corners region and the jurisdiction of several EPA Regional offices, state and tribal agencies, it is critical that the EPA Region 9 proves collaboration with, for example, EPA Region 6 (responsible for New Mexico), EPA Region 8 (includes Colorado) and the NMED/AQB to develop an accurate assessment of air quality sources and emissions here. SJCA requests that the EPA Region 9 provide details on collaboration to date with EPA Regions 6 and 8, and the NMED/AQB in the Draft PSD permit for the proposed Desert Rock facility.

The EPA Region 9 would serve itself well to go back and properly analyze NOx, VOCs and ozone with some of the insight gained by EPA Regions 6 and 8, and NMED participation in the Air Quality Task Force in Colorado and New Mexico.

The Draft PSD permit must analyze the cumulative human health and environmental impacts caused by all air pollutant emissions from the proposed Desert Rock facility, transmission facilities, and Navajo Mine expansion (Areas IV South and V), including, but not limited to:

- Emission of criteria and hazardous air pollutants for the life of the facility--including SO2, CO, NOx, particulate matter, mercury, sulfuric acid, and CO2 and other greenhouse gases.

- The cumulative impacts analysis must include a consideration of emissions from existing and reasonably anticipated proposed air emission sources on NAAQS, air

increment compliance for SO2, NOx, and particulate matter, visibility degradation in Class I and Class II areas, greenhouse gas emission levels, mercury deposition, and nitrogen deposition. This analysis must include all existing power plants, oil and natural gas wells and associated facilities, and coal mines; as well as all proposed and foreseeable power plants, oil and gas wells and associated facilities, and coal mines. This includes all natural gas wells and ancillary facilities analyzed in the 2003 BLM Farmington RMP, the Northern San Juan Basin Coal Bed Methane EIS, and the Southern Ute Oil and Gas EIS.

- EPA Region 9 knows that Four Corners Power Plant has been operating without an air quality permit for 7 years. The San Juan Generating Station is finally initiating air quality emission reductions as a result of a citizen-based lawsuit. For true cumulative impact analysis, the EPA Region 9 cannot allow Sithe to take credit for SO2 reductions made over twenty years ago at the Four Corners Power Plant and the San Juan Generating Station.

II. EPA REGION 9 STANCE THAT THE DRAFT PSD PERMIT AND DRAFT ENVIRONMENTAL IMPACT STATEMENT ARE SEPARATE PROCESSES

The Draft Environmental Impact Statement (DEIS) currently being prepared under NEPA for the proposed Desert Rock facility has not been released to the public. Without full disclosure to the public of the entire proposed Desert Rock facility (including power plant design, transmission alignments, coal mining, coal delivery, ash disposal) to be evaluated in the Draft EIS, analysis of the Draft PSD permit is marginal, at best. EPA's responsibility concerning EIS preparation in relation to PSD permits is clearly specified in Federal PSD rules at 40 CFR § 52.21:

> **Environmental impact statements**. Whenever any proposed source or modification is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the broad environmental reviews under that Act and under section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

EPA Region 9 has failed to coordinate the Draft PSD permit for the proposed Desert Rock facility with the EIS to the "maximum extent feasible and reasonable." EPA Region 9 has accommodated Sithe reasonably; any delays to date for evaluation of the Draft PSD permit have been due to Sithe's inability to provide a clear description of the proposed project and ongoing consultations with FLM's to modify modeling results and develop mitigation. EPA Region 9 has certainly not complied with "broad environmental reviews" to the maximum extent feasible. Decisions concerning the Draft PSD cannot occur until the Final EIS has been completed. SJCA requests that EPA Region 9 re-open the comment period for the Draft PSD permit once the Draft EIS has been released to the public.

The Sithe web page for the proposed Desert Rock facility contains the following statements concerning NEPA:

> Under NEPA, actions such as the Desert Rock Energy Project must consider the potential effects on the environment including human, natural, and cultural resources. Questions that typically are considered by agencies during this type of planning process include:

- Is there a valid purpose and need for the project?
- **Have a reasonable range of alternatives been considered?** (bold for emphasis)
- Is the proposed project consistent with applicable existing regulations and plans?
- Will the proposed project cause adverse effects on the human and natural environment?
- Is mitigation effective in minimizing impact?
- Has the public been informed about the proposed project and had an opportunity to express issues or concerns? [8]

These are astute questions pertaining to the NEPA process, with application to the Draft PSD permitting. SJCA agrees with Sithe's acknowledgment of the importance of the development and evaluation of a full range of Alternatives in the Draft EIS. A possible reasonable range of alternatives includes alternative siting for the proposed Desert Rock facility (i.e. closer to where the power is being transmitted to), alternative coal technologies for energy production, or alternative methods of producing energy to fulfill the purpose and need of the project (including conservation and renewable energy). The fact that the BIA has been designated as the lead agency responsible for preparation of the EIS with numerous cooperating agencies (including the Office of Surface Mining Reclamation and Enforcement, EPA, U.S. Army Corps of Engineers, BLM, and Navajo Nation) speaks to the complexity of the proposed Desert Rock facility. The EPA has Cooperating Agency status for the EIS for the Desert Rock facility and will be required to fully analyze cumulative air quality and public health impacts in the Four Corners region. The speculative nature of the proposed Desert Rock facility suggests that plant and mining designs, and ancillary facilities have not been finalized. Perhaps that is the reason that the release of the Draft EIS has been delayed (it was supposed to be released in September 2006 and is now projected for January of 2007).

SJCA is concerned about the correlation of the timing of the Draft PSD permit and the Draft EIS as the proposed Desert Rock facility seems to be constantly changing. At the Town Hall Meeting on August 2, 2006 in Farmington, New Mexico, Sithe told the public that fly and bottom ash generated by the proposed Desert Rock facility would be sent to Gallup, New Mexico to be marketed. If this is indeed the case, the EPA must evaluate the associated air quality

[8] www.desertrockenergy.com

impacts of trucking the ash to Gallup and all return trips. The Draft PSD permit claims that the ash will be "recycled" in Navajo Mine.

The EIS requires full disclosure to the public of all design details of the Proposed Action and Action Alternatives, the reasonable range of Alternatives. The Draft PSD permit process, including public hearings, can begin anew if the EPA is presented by Sithe, and/or the BIA, with new Alternatives for the proposed Desert Rock facility. The public knows nothing about the full extent of the proposed Desert Rock facility and EPA currently has limited information.

EPA has not been close to coordinating with the broad environmental reviews (the EIS) to the "maximum extent feasible and reasonable" for the Draft PSD permit. SJCA strongly disagrees with EPA Region 9 that the Draft PSD permit and the Draft EIS are separate processes; EPA Region 9 has failed to comply with 40 CFR § 52.21.

III. CONCLUSION

The Draft PSD permit is flawed. No decision should be made by EPA Region 9 for the proposed Desert Rock facility until acceptable air quality data is gathered and analyzed. EPA should work to place monitors in the right places, use appropriate modeling, and evaluate the cumulative effects of adding the proposed Desert Rock facility to the Four Corners region (an area already degraded by air pollution). EPA's responsibility is to evaluate and protect public health, rather than expediting PSD permits for Sithe based on deficient monitoring and modeling. In addition, EPA Region 9 needs to comply with 40 CFR § 52.21 for broad environmental review of the proposed Desert Rock facility.

Sincerely,

s/Mike Eisenfeld

Mike Eisenfeld
New Mexico Staff Organizer
San Juan Citizens Alliance

XI - 18

SAN MIGUEL COUNTY

BOARD OF COMMISSIONERS

VERN EBERT ELAINE FISCHER ART GOODTIMES

VIA FAX (415) 947-3579

October 25, 2006

Mr. Robert Baker, Air-3
U.S. Environmental Protection Agency
75 Hawthorne St.
San Francisco, CA 94105

Dear Mr. Baker,

Environmental quality and unique natural features define the character of San Miguel County and ensuring their continued viability and health is important. Atmospheric Jeposition studies and dispersion modeling conducted in San Miguel County indicate that emissions of air pollutants from the Four Corners area directly affect San Miguel County. The Telluride Region was historically a non attainment area for particulate pollution. Local governments invested millions of dollars to achieve compliance and improve regional air quality. Degradation of these improvements by new pollution sources beyond our local control is of great concern.

The United States Environmental Protection Agency (US EPA) Regio. IX Air Division has proposed a Clean Air Act permit that would authorize construction of a 1500-megawatt coal-fired power plant on the Navajo Nation. The permit regulates the reduction of particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide, volatile organic compounds, and lead emissions with the Best Available Control Technology, and must comply with health-based National Ambient Air Quality Standards.

The comment period for this clean air quality permit closes before the draft Environmental Impact Statement is released to the public resulting in an incomplete understanding of the cumulative impacts of the plant. **The San Miguel County Board of County Commissioners (BOCC) strongly requests that the US EPA Region IX Air Division deny the Clean Air Act Permit for Desert Rock Power Plant** until the full Environmental Impact Statement for this project is completed to allow an understanding of the full cumulative impacts from the proposed plant.

Additionally, mercury is a significant and demonstrable problem resulting in degradation to the regional water supply and to the quality of life for San Miguel County citizens. Failure to include the monitoring of mercury, a byproduct of all coal burning power plants would he negligent to citizens of San Miguel County. **The San Miguel County BOCC hereby requests that all available technology be utilized to reduce the amount of pollutants, including mercury, emitted by this plant.**

Very truly yours,

Elaine R.C. Fischer

Elaine R.C. Fischer, Chair

pc: Congressman John Salazar's Office, SW regional director, John Whitney

Comment 19

Desert Rock Energy Company, LLC.

THREE RIVERWAY · SUITE 1100
HOUSTON, TX 77056
PHONE 713-499-1155
FAX 713-499-1167

October 17, 2006

Mr. Robert Baker (AIR3)
EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901
Email: desertrockairpermit@epa.gov

Re: **Desert Rock Energy Facility (AZP 04-01)**

Subject: **Comments on Proposed PSD Permit Conditions**

Dear Mr. Baker:

Sithe Global, LLC is providing comments on the draft PSD permit for the proposed Desert Rock Energy Facility (DREF). In general, the draft permit accurately reflects our application for the project. Our comments on the draft permit that we request be considered are summarized below. We have also attached a markup of the permit to facilitate your understanding of our comments, as well as including minor edits and revised references to other sections throughout the permit.

1. Title: Please revise the name of the facility shown at the top of the permit from Desert Rock Energy Center to Desert Rock Energy Facility.

2. I. Permit Expiration: Please specify under what circumstances the permit can be extended.

3. II. Notifications of Commencement: Please define construction to include refractory curing and boilout of the boiler. In a Policy Memorandum from Mr. Edward Reich of USEPA, May 5, 1980, EPA has clarified that "boilout constitutes a construction activity, and is not considered commencement of operation under PSD. This is consistent with the approach taken under NSPS regarding boilout." This interpretation is consistent with a September 25, 1978 from US EPA's Enforcement Division that "boil-out should be considered as part of the source construction, not source startup under 60.2(o)." Copies of these two EPA policy memoranda are attached.

4. II. Notification of Commencement: Please also define construction to include steam blow for cleaning the steam piping serving the steam turbine and plant auxiliary systems. This procedure is necessary to insure that debris and scale that are present in these piping systems from their manufacture and assembly in the facility will be removed to prevent damage to the steam turbine and auxiliary equipment. This cleaning is prior to the piping being put into service will not result in the production of electricity from the facility.

5. III. Facility Operation: The permit requires that the facility meet all requirements "at all times". This is assumed to mean that emissions shall be determined for NO_x and SO_x immediately upon first fire in accordance with Part 75 and emission limits must be met upon the completion of the commissioning period in accordance with Part 60. This commissioning period is generally recognized in the NSPS to be conducted 90 days after reaching full load operation or 180 days from initial startup, whichever is less. In addition to this suggested change, it is possible that the equipment, facilities, and systems might not be operating in good order "at all times" due to a natural disaster, malfunction, etc. Sithe therefore recommends adding the words "to the extent practicable" to qualify this statement.

6. IV. Malfunction Reporting: Sithe understands that notifying EPA of a malfunction does not constitute an affirmative defense, but would like to request language in the permit that recognizes the applicability of EPA's overarching affirmative defense policy. Sithe would recommend a simple reference to the policy without significant details so that if the policy changes, the permit would not need to be revised.

7. IX. Special Conditions, B. Air Pollution Control Equipment: For the diesel engines, compliance with the post-2007 emergency diesel engine standards (NSPS) should also be considered to meet BACT. The suggested wording provides this flexibility to DREF.

8. IX. Special Conditions, C. Performance Tests:

    a. Although the permit allows that the annual testing requirement can be removed upon justification, we request the required CEMS RATA be recognized as sufficient for SO_2, NO_x, and CO in lieu of an annual source test.
    b. The permit specifies that Method CTM-35 be used for VOC performance tests. CTM-35, otherwise known as SCAQMD Method 25.3 is a modification/offshoot of EPA Method 25. Basically it yields the same results as Method 25 but at an enhanced detection limit (approximately 1 to 1.5 ppm versus 50 ppm with Method 25). EPA first approved Method CTM-35 for use in 2002. The Method is so new that not many firms outside of California have experience with it. Due to the uncertain availability of testing companies outside of California to support Method CTM-35, we request that Method 25 be listed as an alternate relevant method.
    c. The permit specifies Method 5i be used for front half PM_{10}. The "i" is a typo and should be removed. The filterable test method should be Method 5.
    d. Note, the testing requirements for PM and PM_{10} should be specified separately since PM does not include the condensable portion and PM_{10} will. The test for condensable particulate should be a modified Method 202 test to compensate for the known issues with artifact development that will bias the

results on the high side. Currently, there is no alternate accepted method to test for condensibles. Several modified methods have been proposed and used at other facilities. We expect that appropriate approaches for addressing this issue will be proposed in the Source Test Protocol that will be submitted prior to testing. We request the wording in the permit to provide assurances of flexibility to use appropriate test methods for this facility.

e. The permit identifies Method 8 for H_2SO_4. Method 8 was written specifically for Sulfuric Acid Plant sources and was never validated for combustion sources. Method 8 is well known to result in a positive bias for any source which contains SO2 due to the oxidation of dissolved SO2 to SO3 in the IPA impinger. The purge specified at the end of the Method 8 run, which is supposed to minimize the SO2 oxidation problem, isn't always effective since the oxidation occurs during the run and well as after the run is finished. The expected presence of ammonia slip from the SCR in this facility will make the problem worse. Other sources have used Method 8A, a controlled condensation sample collection procedure for combustion sources. We request Method 8A as a substitute for the original Method 8 referenced in the permit.

9. IX. Special Conditions, Emission Limits (Sections D – N):

a. The proposed Permit Conditions add a decimal place to all BACT limits proposed, which should in each case be deleted. For example, the proposed BACT limit of 0.06 lb/MMBtu for NO_x becomes 0.060 in the draft permit. They are not the same thing. 0.060 is more stringent than proposed, and in the case of trace pollutants such as Pb (.00020) implies a higher level of precision test method. These limits should all be revised to the same significant digit as proposed in the DREF Application.

b. Only SO_2 has a 3-hour ambient air quality standard and thus a 3-hour averaging time limit. The lb/hr emission levels on the other pollutants are based on BACT determinations (in lb/MMBtu) that assumed 24-hour averages and hence the lb/hr limits should be stated as 24-hour averages. For SO_2, NOx, and CO, compliance will be determined with CEMS. For the other pollutants (VOC, H_2SO_4, HF, and lead), it is assumed that the 3-hour average corresponds to the results of periodic source tests that are comprised of three 1-hour test runs, or as modified to obtain sufficient samples, however, these also should be specified consistently with the BACT findings. Modifications to this section of the permit are intended to clarify compliance with the BACT determination and appropriate testing requirements.

c. Annual limits should be given as ton per year limits averaged over 365 days. This approach would appear less confusing on why the hourly levels are different for different averaging periods. Furthermore, since these levels include a plant capacity factor, they should be presented as a combined annual total for the two PC boilers.

d. Section J.1 requires an opacity limit of 10% on the PC Boilers. However, NSPS Subpart Da only requires that a 20% opacity be met, with one 6-minute period per hour at 27%.

e. Section J.2 requires an opacity limit of 10% on material handling systems. However, NSPS Subpart Y requires opacity limits of 20% on coal handling systems and Supart OOO requires opacity limits ranging from 7% to 15% on

limestone handling systems. The permit conditions should be revised to be consistent with applicable NSPS requirements.

f. In Section N, emissions during Startup and Shutdown should be averaged over the duration of the event. Additionally, the definition for startup needs to exclude the one time initial startup event which will require longer periods of time due to the construction process.

10. IX. Special Conditions, CEMS (Section Q):

    a. CEMS are required (Q.1) to be installed within 60 days of initial startup. This is sufficient if certification of the CEMS is not required. This requirement should mimic the timing of the initial performance tests, i.e., within 60 days of achieving base load but no later than 180 days after initial startup if certification of the CEMS is required in the first 60 days. (Section C.1, and see also R.2).

    b. The permit contains a requirement (Q.1.ii) for a PM CEMS. Although PM CEMS have been required for some facilities as a result of settlements of enforcement actions, Sithe is unaware of any facility that has been required to install PM CEMS as a normal operating requirement. These units are still experimental and unproven. The preamble to the recently amended 40 CFR 60 Subpart Da (federal Register February 27, 2006), states "While not required, PM CEMS may be used as an alternative method demonstrate continuous compliance and as an alternative to opacity and parameter monitoring requirements." Specifically, the NSPS (40 CFR 60.48Da (o)(4) requires the Desert Rock Energy Facility to "(i) Install and operate a bag leak detection system for each exhaust stack of the fabric filter (ii) Each bag leak detection system must be installed, operated, calibrated and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in EPA-454/R-98-105, September 1997. (iii) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less." The PM CEMS *alternative* is provided in 40 CFR 60 Da (p) – "As an alternative to meeting the compliance provisions specified in paragraph (o) of this section, an owner or operator may elect to install, certify, maintain and operate a continuous emission monitoring system measuring particulate emissions discharged from the affected facility to the atmosphere and record the output of the system as specified in paragraphs (p)(1) through (p)(8) of this section." The Desert Rock Energy Facility will utilize continuous opacity monitoring and bag leak detectors instead of PM CEMS. Given that the cumulative modeling results for PM10 showed that impacts would be less than 30% of the PSD increments, this requirement would be extremely onerous and Sithe requests that it be deleted. We will meet the requirements for an opacity monitor in Q.2 instead.

11. Note, if the requested changes are made, then it becomes necessary to make other changes throughout the permit. For example, if the PM CEMS requirements are deleted as requested, then changes will be needed in Condition R.3.v. These changes have been made in the proposed draft to be consistent.

We appreciate the opportunity to provide comments on the draft permit and appreciate EPA's efforts to date. Please feel free to contact me at (713) 499-1155 should you have any questions on these comments.

Sincerely,

Dirk Straussfeld
Executive Vice President
Sithe Global Power LLC
Desert Rock Energy LLC

DESERT ROCK ENERGY FACILITY (AZP 04-01)

PROPOSED PERMIT CONDITIONS

I. Permit Expiration

This permit shall become invalid (1) if construction is not commenced (as defined in 40 CFR 52.21(b)(9)) within 18 months after the approval takes effect, (2) if construction is discontinued for a period of 18 months or more, or (3) if construction is not completed within a reasonable time.

II. Notification of Commencement of Construction and Startup

The Permittee must notify EPA in writing of the anticipated date of initial startup of the Desert Rock Energy Facility not more than sixty (60) days nor less than thirty (30) days prior to such date and must notify EPA in writing of the actual date of commencement of construction and initial startup within fifteen (15) days after each has occurred. For all purposes of this permit, construction means fabrication, erection or installation of an affected facility through refractory curing, boilout, steam blow and 'initial startup' shall mean the setting in operation of an affected facility after construction for any purpose. 'Affected facility' is further defined as any apparatus, equipment, or emission unit subject to a standard in this permit or in the applicable Performance for New Stationary Sources regulations found at 40 CFR 60 Subparts A and D.

III. Facility Operation

Subsequent to start of commercial operation as defined in 40 CFR Part 75, all equipment, facilities, and systems installed or used to achieve compliance with the terms and conditions of this permit, to the extent practicable, must at all times be maintained in good working order and be operated as intended so as to minimize air pollutant emissions.

IV. Malfunction

A. Reporting

The Permittee must notify EPA by telephone, facsimile, or electronic mail transmission within two (2) working days following the discovery of any failure of air pollution control equipment, process equipment, or of a process to operate in a normal manner, which results in an increase in emissions above any allowable emission limit stated in Section IX of this permit. In addition, the Permittee must notify EPA in writing within fifteen (15) days of any such failure.

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The notification shall include a description of the malfunctioning equipment or abnormal operation, the date of the initial malfunction, the period of time over which emissions were increased due to the failure, the cause of the failure, the estimated resultant emissions in excess of those allowed in Section IX, and the methods utilized to mitigate emissions and restore normal operations. Compliance with this malfunction notification provision shall not excuse or otherwise constitute a defense to any violation of this permit or of any law or regulation that such malfunction may cause.

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B. Affirmative Defense to Malfunctions

Malfunctions shall be subject to an affirmative defense consistent with applicable EPA guidance and regulations.

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V. Right of Entry

The EPA Regional Administrator, and/or his authorized representative, upon the presentation of credentials, must be permitted:

1. to enter the premises where the source is located or where any records are required to be kept under the terms and conditions of this permit;

2. at reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit;

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3. to inspect any equipment, operation, or method required in this permit; and

4. to sample emissions from the source(s).

VI. Transfer of Ownership

In the event of any changes in control or ownership of the facility(s) to be constructed, the permit must be binding on all subsequent owners and operators. The Permittee must notify the succeeding owner and operator of the existence of this permit and its conditions by letter, a copy of which must be forwarded to the EPA.

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VII. Severability

The provisions of this permit are severable, and, if any provision of the permit is held invalid, the remainder of this permit shall be unaffected.

VIII. Other Applicable Regulations

The Permittee must construct and operate the proposed power plant in compliance with all other applicable provisions of 40 CFR Parts 51, 52, 60, 63, 72 through 75, and all other applicable federal, state, and local air quality regulations.

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IX. Special Conditions

A. Certification

The Permittee must notify the EPA in writing of compliance with Conditions IX.B. and IX.Q. below, and must make such notification within fifteen (15) days of such compliance. The letter must be signed by a responsible official of the Permittee.

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B. Air Pollution Control Equipment and Operation

On or before the date of initial startup of the power plant (as defined in Condition II. of this permit), and thereafter, the Permittee shall install, continuously operate, and maintain the following controls:

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1. Low NOx burners and a Selective Catalytic Reduction (SCR) system for the control of NO_x from the PC boilers.

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2. Hydrated lime injection and wet limestone desulfurization for the control of SO_2, H_2SO_4, and HF from the PC boilers.

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3. A baghouse for the control of PM emissions from the PC boilers.

4. Ignition timing retard, turbo-charging and after-cooling (or use of Tier 2 certified engines that meet the emissions control levels required under Subpart IIII of the NSPS (40.CFR 60.4202) for the control of NO_x from the emergency diesel generators and from the diesel firewater pumps.

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5. Enclosures, and fabric filters for the control of PM emissions from the coal, limestone, and lime handling systems.

6. The inactive coal storage pile will be covered with soil or other crusting agents, and when coal is added or reclaimed it will be wetted and/or treated with chemical agents to minimize fugitive dust emissions.

7. The aforementioned "continuous" periods of operation do not include periods of startup and shutdown, as defined in Condition IV.

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C. Performance Tests

1. Within 60 days after achieving the base load, but no later than 180 days after initial startup, and annually thereafter (within 30 days of the anniversary of the initial performance test), the Permittee must conduct performance tests (as described in 40 CFR 60.8) for SO_2, NO_x, CO, VOC, PM, PM_{10}, H_2SO_4, HF and Pb on the exhaust stack gases for the PC boilers and NO_x, CO, VOC, PM, and PM_{10} on the exhaust stack gases for the auxiliary boilers. For purposes of performing annual performance tests, annual Relative Accuracy Test Audits (RATA) performed to certify CEMS under Parts 60 and/or 75 shall be deemed to satisfy this requirement for those emissions that are continuously monitored. The Permittee must furnish the EPA with a written report of the results of such tests within 60 days of completion of each test. After initial performance tests, upon written request from the Permittee, and adequate justification, EPA may waive a specific annual test and/or allow for testing to be done at less than maximum operating capacity.

2. The performance tests required by Section IX.C.1. must be performed in accordance with the test methods set forth in 40 CFR 60.8 and 40 CFR 60, Appendix A, as modified below or as otherwise modified with approval of the Administrator, or an equivalent method as approved by the Administrator. The following test methods must be used:

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i. Initial performance tests for the emissions of SO_2 shall be conducted using EPA Methods 1-4 and 6C.

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ii. Initial performance tests for the emissions of NO_x shall be conducted using EPA Methods 1-4 and 7E. Method 7E shall be performed using a full sampling traverse at sampling points selected according to Method 1. A sample spiking procedure through the entire sampling train must be performed before and after the test runs to assure that NO_2 is being measured properly. If NO_2 measurement falls below 90%, the data must be adjusted or the test repeated.

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iii. Initial performance tests for the emissions of CO shall be conducted using EPA Methods 1-4 and 10.

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iv. Performance tests for the emissions of VOC shall be conducted

using EPA conditional Method 25, or CTM-35.

v. Performance tests for the emissions of PM/PM_{10} shall be conducted using EPA Method 5 (PM), and Method 5 and modified Method 202 for PM_{10}.

vi. Performance tests for the emissions of H_2SO_4 shall be conducted using EPA Methods 1-4 and modified Method 8A and/or ASTM 3226-73T.

vii. Performance tests for the emissions of HF shall be conducted using EPA Methods 1-4 and 13a.

viii. Performance tests for the emissions of lead shall be conducted using EPA Methods 1-4 and 12.

ix. Performance tests for the determination of the opacity of emissions shall be conducted using EPA Method 9.

In lieu of the above-mentioned test methods, the Permittee may use equivalent methods with prior written approval from EPA. The Permittee must notify EPA in writing at least 30 days prior to such tests to allow time for the development of an approvable performance test plan and to arrange for an observer to be present at the test. The performance test plan shall address the conditions specified in IX.C.2., above.

3. For performance test purposes, sampling ports, platforms, and access must be provided by the Permittee on the emission unit exhaust system in accordance with 40 CFR 60.8(e).

D. Emission Limits for SO_2

On or after the date of initial startup, the Permittee shall not discharge or cause the discharge of SO_2 into the atmosphere from the PC boilers in excess of the following amounts:

1. 612 lb/hr, (each PC boiler) based on the average of three (3) one hour runs.

2. 0.06 lb/MMBtu, (each PC boiler) averaged over any 24-hour calendar day.

3. 3,315 tons per year, (both PC boilers) averaged over a rolling 365-day period.

E. Emission Limits for NO_x (calculated as NO_2)

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On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of NO_x from the PC boilers into the atmosphere in excess of the following amounts:

1. 408 lb/hr, (each PC boiler) averaged over any 24-hour calendar day.
2. 0.06 lb/MMBtu, (each PC boiler) averaged over any 24-hour calendar day.
3. 3,315 tons per year, (both PC boilers) averaged over a rolling 365-day period.

F. Emission Limits for CO

On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of CO from the PC boilers into the atmosphere in excess of the following amounts:

1. 680 lb/hr, (each PC boiler) averaged over any 24-hr calendar day.
2. 0.1 lb/MMBtu, (each PC boiler) averaged over any 24-hour calendar day.
3. 5,526 tons per year, (both PC boilers) averaged over a rolling 365-day period.

G. Emission Limits for VOC

On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of VOC from each PC boiler into the atmosphere in excess of the following amounts:

1. 20.4 lb/hr, based on the average of three one-hour runs.
2. 0.003 lb/MMBtu, averaged over any 24-hour calendar day.

H. Emission Limits for PM

On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of PM from each PC boiler into the atmosphere in excess of the following amounts:

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1. 66.4 lb/hr, based on the average of three one-hour runs.

2. 0.01 lb/MMBtu, averaged over any 24-hour calendar day.

I. Emission Limits for Total PM_{10}

On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of total PM_{10} from each PC boiler into the atmosphere in excess of the following amounts:

1. 132.8 lb/hr, based on the average of three one-hour runs

2. 0.02 lb/MMBtu, averaged over any 24-hour calendar day.

J. Opacity Limits

1. On and after the date of initial startup, the Permittee shall not discharge or cause the discharge into the atmosphere from the PC boiler exhaust stack gases which exhibit an opacity of 20% or greater averaged over any six minute period.

2. On or after the date of initial startup, the Permittee shall not discharge or cause the discharge into the atmosphere from any coal handling system gases, which exhibit an opacity of 20% or greater averaged over any six minute period, and not more than 27% in no more than one six minute period in any hour.

3. Subsequent to initial startup, the Permittee shall not discharge or cause the discharge into the atmosphere from any limestone handling system gases, which exhibit an opacity of 15% or greater averaged over any six minute period, or as specified in NSPS Subpart OOO as applicable.

K. Emission Limits for H_2SO_4

On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of H_2SO_4 from each PC boiler into the atmosphere in excess of the following amounts:

1. 26.6 lb/hr, based on the average of three one-hour runs

2. 0.004 lb/MMBtu, averaged over any 24-hour calendar day.

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L. Emission Limits for Lead

On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of lead from each PC boiler into the atmosphere in excess of the more stringent of 1.33 lb/hr or 0.0002 lb/MMBtu, averaged over any 24-hour calendar day.

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M. Emission Limits for Fluorides (HF)

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On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of HF from each PC boiler into the atmosphere in excess of the more stringent of 1.6 lb/hr or 0.00024 lb/MMBtu, averaged over any 24-hour calendar day.

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N. Emission Limits During Startups and Shutdowns

1. During the startup and shutdown periods defined in Condition N.2. below, the combined emissions from each PC boiler unit, verified by the CEMS, shall not exceed the following:

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SO_2: 797 lb/hr, averaged over the duration of the start-up.
NO_x: 797 lb/hr, averaged over the duration of the start-up.
CO: 1,328 lb/hr, averaged over the duration of the start-up

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2. 'Startup' shall be defined as each period after initial startup beginning with ignition and lasting until the equipment has reached a continuous operating level and operating permit limits.

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3. Shutdown shall be defined as each period after initial startup beginning with the lowering of equipment from minimum load and lasting until fuel is no longer added to the boiler and combustion has ceased.

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4. The Permittee must operate the CEMS during startups and shutdowns.

5. The Permittee must record the time, date and duration of each startup and shutdown. The records must include calculations of emissions during each event based on the CEMS data. These records must be kept for five years following the date of such event.

6. All emissions during these events shall be included in all calculations of

hourly, and annual mass emission rates as required by this permit.

O. Auxiliary Boilers

1. The Permittee shall restrict fuel use for the operation of the auxiliary boilers to low sulfur fuel oil with a sulfur content of no more than 0.05% S.

2. The Permittee shall restrict operation of the auxiliary boilers to no more than 142,560 MMBtu/year on a combined basis. A log reporting the date, time, and duration of the boilers' operation shall be maintained. This log must be kept for five years.

3. On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of SO_2 from each of the auxiliary boilers into the atmosphere in excess of 4.38 lb/hr as calculated from fuel sulfur content and heat input..

4. On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of NOx from each of the auxiliary boilers into the atmosphere in excess of 8.64 lb/hr, from stack performance testing, based on the average of three one-hour runs.

5. On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of CO from each of the auxiliary boilers into the atmosphere in excess of 3.09 lb/hr, from stack performance testing, based on the average of three one-hour runs.

6. On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of VOC from each of the auxiliary boilers into the atmosphere in excess of 0.21 lb/hr, from stack performance testing, based on the average of three one-hour runs.

7. On and after the date of initial startup, the Permittee shall not discharge or cause the discharge of PM_{10} from each of the auxiliary boilers into the atmosphere in excess of 2.04 lb/hr, from stack performance testing, and based on the average of three one-hour runs.

P. 1000-kW Emergency Backup Generators and 180 kW Fire pumps

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1. The Permittee shall restrict fuel use for the emergency backup generators and the fire pump engines to diesel fuel with a maximum sulfur content of 0.05%.

2. The engines shall be used only for maintenance, testing, required regulatory purposes, and during emergency situations and shall not be used to increase the quantity of electricity generated for sale. The Permittee shall restrict the operation of the emergency backup generators and the fire pump engines to no more than 2,676 MMBtu/year. This restriction is not applicable during emergency situations.

Q. Continuous Emissions Monitoring System

1. Prior to the date of initial performance testing or within 90 days from the commercial operations date as defined in 40 CFR 75, whichever is sooner, the Permittee must install, maintain and operate the following continuous monitoring systems (CEMS) in each PC boiler exhaust system:

   i. A continuous monitoring systems to measure stack gas SO_2, NO_x, CO, and O_2 concentrations. The systems must meet EPA monitoring performance specification (40 CFR 60.13 and 40 CFR 60, Appendix B, Performance Specifications 2, 3 and 4). The SO_2 and NO_x monitoring system must also meet all applicable requirements of 40 CFR 75 Appendix A, including the 10% relative accuracy requirement of 40 CFR. Part 75 Appendix A 3.3.

   ii. Calculation of the SO_2, NO_2, and CO hourly emission rates shall use the pollutant and diluent monitors required in Condition Q.1.i. with either stack flow monitoring adjusted for moisture, or calculated stack flow rates. Any stack flow monitoring system shall meet the requirements of 40 CFR 75 Appendix A. Calculations of stack flow shall use the appropriate F factor from 40 CFR 60 Appendix A Method 19, the O_2 monitor, and a fuel flow meter(s) which meets the requirements of 40 CFR 75 Appendix D 2.1.5 and 2.1.6.

   iii. Not less than 90 days prior to the date of initial startup of the Facility, the Permittee shall submit to the EPA a quality assurance project plan for the certification and operation of the continuous emission monitors. Such a plan shall conform to EPA requirements

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ii. . A continuous monitoring system to measure stack gas PM concentrations. The monitor shall be operated according to performance specification 11 of 40 CFR 60, Appendix B.

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contained in 40 CFR 60, Appendix F for CO, SO_2, NO_2, O_2, and 40 CFR 75 Appendix B for stack flow. The plan shall be updated and resubmitted upon request by EPA.

2. Prior to the date of startup and thereafter, the Permittee shall install, maintain and operate a transmissometer system for continuous measurement of the opacity of stack emissions. The system shall meet EPA monitoring performance specifications (40 CFR 60.13 and 40 CFR 60, Appendix B, Performance Specification 1).

R. Reporting and Record Keeping

1. The Permittee must maintain a file of all records, data, measurements, reports, and documents related to the operation of the facility, including, but not limited to, the following: all measurements or data pertaining to continuous monitoring systems evaluations; all continuous monitoring systems or monitoring device calibration checks; all continuous monitoring data; all records or reports pertaining to adjustments and/or maintenance performed on any system or device at the Facility; all records relating to performance tests; and all other information required by this permit and 40 CFR 60 Appendices A-B and 40 CFR 75, recorded in a permanent form suitable for inspection. The file must be retained for five years following the date of such measurements, maintenance, reports and/or records.

2. The Permittee must notify EPA of the date on which the demonstration of the continuous monitoring system performance commences (40 CFR 60.13). This date must be within 90 days from the commercial operations date as defined in 40 CFR 75 but not later than 180 days after initial startup.

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3. The Permittee must submit a written report of all excess emissions to EPA for every calendar quarter. The report must include the following:

   i. The magnitude of the excess emissions computed in accordance with 40 CFR 60.13(h), any conversion factors used, the date and time of commencement, and compilation of each time period of excess emissions.

   ii. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of any

equipment. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted must also be reported.

iii. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks, and the nature of the system repairs or adjustments.

iv. When no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report.

v. Excess emissions shall be defined as any period during which the average emissions of SO_2, NO_x, or CO as measured by the CEMS exceeds the maximum emission limits set forth in Conditions IX.D, E, and F; and any startup and shutdown event defined in Condition IX.N during which aggregate emissions as measured by the CEMS exceed the maximum emission limits set forth in Condition IX.N.

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4. Excess emissions indicated by the CEMS must be considered violations of the applicable emission limit for the purpose of this permit.

S. New Source Performance Standards

The proposed power plant is subject to the federal regulations entitled Standards of Performance for New Stationary Sources (40 CFR 60). The Permittee must meet all applicable requirements of 40 CFR 60 Subparts A, Da, Dc, Y, OOO, and Kb of this regulation.

T. Permit Revision

1. At the end of an 18-month period immediately following initial startup, the Permittee may submit to EPA the performance testing data collected in this period for total PM_{10} for each PC boiler. The performance testing data shall be in raw and reduced or summarized form.

2. If EPA determines from the performance testing data that the PC boilers and associated control devices have not achieved PM_{10} emissions lower than the limits prescribed in IX.I. EPA may revise these conditions to reflect the equipment and control devices' performance.

X. Agency Notifications

All correspondence as required by this permit must be forwarded to:

Director, Air Division (Attn: AIR-3)
EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Environmental Department Director
Navajo Nation EPA
P.O. Box 9000
Window Rock, AZ 86515

XI -20

USDA United States Department of Agriculture | Forest Service | Rocky Mountain Region

P.O. Box 25127
Lakewood, CO 80401
Delivery: 740 Simms Street
Golden, CO 80401
Voice: 303-275-5350
TDD: 303-275-5367

File Code: 2580-3
Date: SEP - 8 2006

Ms Deborah Jordan
Division Director
US EPA Region IX
75 Hawthorn Street
AIR - 1
San Francisco, CA 94105-3901

Dear Ms Jordan:

On April 26, 2006 we provided you with a comment letter (enclosed) regarding the Prevention of Significant Deterioration (PSD) permit application prepared by Sithe Global Energy (Sithe) for the construction and operation of the Desert Rock Energy Facility. The proposed facility will include two 750-megawatt pulverized-coal boilers on the Navajo Nation land in northwestern New Mexico for a total of 1500 MW.

In that letter we expressed our concerns about the potential impacts from the proposed Desert Rock facility emissions on mandatory Class I Wilderness Areas and federal Class II Areas administered by the USDA Forest Service (USDA-FS). We would like to clarify exactly what the USDA-FS intended to convey to EPA in our April 26, 2006 letter since there has been some confusion about whether or not the USDA-FS found that the impacts were adverse and subsequently whether mitigation in the PSD permit was needed.

Based on the information provided to us by Sithe, the USDA-FS does find that the predicted impacts on visibility and acid deposition would be adverse. But, with the mitigation agreement (enclosed) that Sithe has agreed to execute, the USDA-FS finds those impacts would be sufficiently mitigated and it would not recommend that the permit be denied based on impacts to resources in the areas that it administers. However, and this is a key point, without the mitigation the impacts would be adverse.

Under section 165(d)(B) of the Clean Air Act, (42 U.S.C. § 7475(d)(B)), the USDA-FS has an affirmative responsibility to protect the visibility and other air quality related values of USDA-FS administered Class I Wilderness Areas and to consider whether a proposed major emitting facility will have an adverse impact on such values. We must ensure that new sources do not adversely impact the visibility in these Wilderness Areas, or if they do, ensure that those impacts are adequately mitigated.

In order to meet those responsibilities the USDA-FS worked with Sithe, the Navajo Nation, the Department of the Interior-National Park Service and Environmental Protection Agency Region 9 representatives to mitigate the predicted impacts in the mandatory Class I areas and in the federal Class II areas.

We would like to commend Sithe for their willingness to work cooperatively with the USDA-FS in order to arrive at a workable solution. Sithe has agreed to a mitigation strategy that will obtain

emission reductions within the region that will more than offset their contribution to regional visibility impairment and will also reduce atmospheric deposition (i.e. acid rain). It is our understanding that Sithe is committed to executing the mitigation agreement in whole (telephone conversation between Bud Rolofson (USDA-FS) and Gus Eghneim (Sithe) August 7, 2006). Although we accept and respect that commitment, we never the less reserve our right to revisit the issue of adverse impacts if that commitment is not met by all the parties.

The USDA-FS believes that this clarification can result in the mitigation agreement being included as a federally enforceable permit condition for regulated pollutants subject to PSD review and as voluntary mitigation for mercury and carbon dioxide emissions also agreed to by Sithe as part of the overall mitigation agreement.

By this letter USDA-FS is meeting its affirmative responsibility in the PSD process while at the same time avoiding the need to make an adverse impact determination on the proposed project at this time. We ask that you help us meet this responsibility by including the mitigation agreement in the PSD permit as a federally enforceable permit condition to the fullest extent possible.

If you have any questions regarding this matter, please contact Rick Cables, USDA-FS R2 Regional Forester, at (303) 275-5450 or Harv Forsgren, USDA-FS R3 Regional Forester, at (505)-842-3300.

Sincerely,

/s/ Harv Forsgren

FR RICK D. CABLES
Regional Forester, R2

HARV FORSGREN
Regional Forester, R3

cc: Bud Rolofson, Jeff A Sorkin, Wayne A Robbie, Bob Davis, Mark Boche

USDA United States Department of Agriculture | Forest Service | Rocky Mountain Region

P.O. Box 25127
Lakewood, CO 80401
Delivery: 740 Simms Street
Golden, CO 80401
Voice: 303-275-5350
TDD: 303-275-5367

File Code: 2580
Date: April 26, 2006

Ms Deborah Jordan
Division Director
US EPA Region IX
75 Hawthorn Street
AIR - 1
San Francisco, CA 94105-3901

Dear Ms. Jordan:

We have reviewed the Prevention of Significant Deterioration (PSD) permit application prepared by Sithe Global Energy (Sithe) for the construction and operation of the Desert Rock Energy Facility. The proposed facility will include two 750-megawatt pulverized-coal boilers on the Navajo Nation land in northwestern New Mexico for a total of 1500 MW.

The USDA Forest Service (USDA-FS) administers seven mandatory Class I Wilderness Areas (La Garita, Pecos, San Pedro Parks, West Elk, Weminuche, Wheeler Peak, Mt. Baldy) and nine Class II Wilderness Areas within 300 km of the proposed facility. Under section 165(d)(B) of the Clean Air Act, (42 U.S.C. § 7475(d)(B)), the USDA-FS has an affirmative responsibility to protect the visibility and other air quality related values of USDA-FS administered Class I Wilderness areas and to consider whether a proposed major emitting facility will have an adverse impact on such values. Under the Wilderness Act, the USDA-FS has responsibilities to administer all Wilderness areas to maintain their Wilderness character and natural conditions.

Our role in the PSD permit process (42 U.S.C. § 7475) is to work with the US EPA and applicable state and Tribal governments to ensure that these important air quality attributes in Wilderness areas are protected. Wilderness areas near the proposed facility have some of the most pristine air in the country, but visibility impairment has been documented and certified in several of the nearby Class I Wilderness areas. We expect to see visibility improve as State and Tribal governments incorporate Best Available Retrofit Technology ("BART") and other provisions of EPA's Regional Haze Rule into regulatory strategies. However, until State and Tribal governments implement these BART strategies, we need to make progress toward the national visibility goal of no human-caused visibility impairment in Class I Wilderness areas. We must ensure that new sources do not adversely impact the visibility in these Wilderness areas, or if they do, that those impacts are adequately mitigated.

In cooperation with Sithe, the Navajo Nation, the Department of the Interior-National Park Service and Environmental Protection Agency Region 9 representatives over the past two years, we have carefully analyzed the potential impacts of the proposed Desert Rock Energy Facility and discussed ways to mitigate those impacts. Our primary goal is to improve existing air quality such that even if the Desert Rock Energy Facility were constructed and operated, there would be a net air quality improvement in the region. This is consistent with other ongoing efforts including the Four Corners Air Quality Task Force.

USDA-FS Preliminary Findings

- With a sufficient mitigation strategy, the USDA-FS can meet its affirmative responsibility in the PSD process and avoid the need for consideration of an adverse impact determination.
- Sithe has proposed a mitigation strategy to obtain emission reductions within the region that will more than offset their contribution to regional visibility impairment and will also reduce atmospheric deposition (i.e. acid rain).
- The USDA-FS has concluded that this commitment provided it is Federally enforceable and is included as a PSD permit condition, addresses our concerns and therefore we would not object to the proposed Desert Rock Energy Facility permit.
- To inform the public of our position regarding the Desert Rock Energy Facility, we suggest that you include the following language in your notice of public comment for the project:

"The USDA-Forest Service, as a Federal Land Manager, has informed EPA that the mitigation measures included in the draft permit are sufficient to alleviate concerns about potential adverse impacts on air quality related values (including visibility) at USDA Forest Service Class I areas in the region."

Tribal Government Relations

- We acknowledge the sovereign status of the Navajo Nation and their right to manage and utilize their natural resources.
- We appreciate the willingness of the Navajo Nation and Sithe to work with us to address our air quality concerns. Through this cooperative effort, we believe the natural resources that the USDA-FS administers will be protected and therefore the Desert Rock Energy Facility PSD permit application can move forward.
- We are interested in maintaining and improving our government-to-government relationship with all tribal nations and we support effective consultation with all tribal partners. This also includes tribal governments other than the Navajo Nation that may potentially be affected by the Desert Rock Energy Facility.
- We understand EPA intends to sponsor at least three workshops for tribes. We encourage you to design a consultation strategy to convey appropriate and accurate messages at formal consultation meetings. We are very willing to participate in this endeavor. In any event, we reserve the right to consult independently with tribal officials regarding this matter and to present the USDA-Forest Service's position on this project.

If you have any questions regarding this matter, please contact Rick Cables, USDA-FS R2 Regional Forester, at (303) 275-5450 or Harv Forsgren, USDA-FS R3 Regional Forester, at (505)-842-3300.

Sincerely,

/s/ William Ott (for)
RICK D. CABLES
Regional Forester

/s/ Abel M. Camarena (for)
HARV FORSGREN
Deputy Regional Forester,
Resources

Sithe Global Energy (Sithe) Mitigation Proposal
for the Desert Rock Energy Facility (DREF)
April 2006

Option A: For the purposes of mitigating visibility and acid deposition impacts of the DREF at Class I air quality areas in the region, Sithe shall obtain Emission Reduction Credits from physical and/or operational changes that result in real emission reductions at one or more Electric Generating Units[1] (EGUs) within 300 km of the DREF and retire sulfur dioxide[2] Allowances in accordance with the following:

- The number of sulfur dioxide Emission Reduction Credits required for the respective calendar year shall be determined by DREF's actual sulfur dioxide emissions, in tons, plus 10%.
- The amount of Emission Reduction Credits achieved would be determined by comparing the average emission rate (in tons per year) during the two-year period prior to the emission reduction to the emission rate (in tons) during the year for which the reduction is claimed.
- Acceptable sulfur dioxide Emission Reduction Credits under this condition shall be from facilities that were allocated sulfur dioxide Allowances under 40 CFR 73[3] and that are located within 300 km of the DREF facility.
- The vintage year of the Emission Reduction Credits shall correspond to the year that is being mitigated. Sithe shall retire the required Emission Reduction Credits by transferring an equivalent number of Allowances into account #XXX with the U.S. EPA Clean Air Markets Division[4]. Except for Sithe's purposes under Title IV, these retired Allowances can never be used by any source to meet any compliance requirements under the Clean Air Act, State Implementation Plan, Federal Implementation Plan, Best Available Retrofit Technology requirements, or to "net-out" of PSD. However, surplus Emission Reduction Credits could be used at the discretion of the holder of the credits.
- Sithe shall submit a report to the EPA Region 9 Administrator no later than 30 days after the end of each calendar year which shall contain the amount of sulfur dioxide emitted; amount, facility, location of facility, vintage of Emission Reduction Credits retired; proof Emission Reduction Credits/Allowances have been transferred into account #XXX; and any applicable serial or other identification associated with the retired Emission Reduction Credits/Allowances.

---

[1] Provided that Sithe proposes a method acceptable to the Federal Land Managers for determining emission reductions, Sithe may obtain real emission reductions at sources other than EGUs.

[2] Provided that Sithe proposes a method acceptable to the Federal Land Managers for determining and tracking emission reductions, nitrogen oxides reductions may be substituted for sulfur dioxide reductions by a ratio of three tons of nitrogen oxides to one ton of sulfur dioxide.

[3] Provided that Sithe proposes a method acceptable to the Federal Land Managers for determining emission reductions, Sithe may obtain physical emission reductions at sources other than EGUs.

[4] Provided that Sithe proposes a method acceptable to the Federal Land Managers for determining and tracking Emission Reduction Credits, Sithe may obtain real emission reductions at sources other than EGUs. Nitrogen oxides reductions may be substituted for sulfur dioxide reductions by a ratio of three tons of nitrogen oxides to one ton of sulfur dioxide.

Due to the actual emission reductions obtained from nearby sources under this Option, the Federal Land Managers prefer this approach to mitigating DREF's air quality impacts.

Or,

Option B: For the purposes of mitigating visibility and acid deposition impacts of the DREF at Class I air quality areas in the region, Sithe shall obtain and retire sulfur dioxide "Mitigation Allowances" from one or more EGUs within 300 km of the DREF in accordance with the following:

- In addition to those Allowances required under Title IV, the required number of sulfur dioxide "Mitigation Allowances" for the respective calendar year shall equal DREF's actual total sulfur dioxide emissions, in tons.
- Acceptable sulfur dioxide "Mitigation Allowances" under this condition shall be from facilities that were allocated sulfur dioxide Allowances under 40 CFR 73 and that are located within 300 km of the DREF. However, the total annual cost of "Mitigation Allowances" purchased beyond those regular Allowances required by Title IV is not to exceed three million dollars[5].
- The vintage year of the "Mitigation Allowances" shall correspond to the year that is being mitigated. Sithe shall retire these "Mitigation Allowances" by transferring them into account #XXX with the U.S. EPA Clean Air Markets Division. These retired "Mitigation Allowances" beyond Title IV can never be used by any source to meet any compliance requirements under the Clean Air Act, State Implementation Plan, Federal Implementation Plan, Best Available Retrofit Technology requirements, or to "net-out" of PSD.
- Sithe shall submit a report to the EPA Region 9 Administrator no later than 30 days after the end of each calendar year which shall contain the amount of sulfur dioxide emitted from the DREF; amount, facility, location of facility, vintage of Allowances retired; proof Allowances have been transferred into account #XXX; and any applicable serial or other identification associated with the retired Allowances.

And,

If Sithe chooses Option A, they will contribute $300,000 annually toward environmental improvement projects that would benefit the area affected by emissions from DREF, including the Class I areas and the Navajo Nation. Appropriate projects will be determined jointly by the Federal Land Managers and Dine Power Authority, and may include projects that would reduce or prevent air pollution or greenhouse gases, purchasing and retiring additional emission reduction credits or allowances, or other studies that would provide a foundation for air quality management programs.

[5] All costs referenced in this document are base-year 2006 dollars that will be adjusted for inflation by using the consumer price index.

If Sithe chooses Option B, they will contribute toward environmental improvement projects an amount equal to the $3 million cap minus the cost of the Mitigation Allowances, up to a maximum of $300,000.

And,

Sithe will reduce mercury emissions by 90% provided that the cost of the additional controls does not exceed 0.5 mils/kWh. Compliance with this provision will be determined by installing and operating an EPA-approved Continuous Emission Monitor coupled with either sampling of coal mercury content or continuous monitoring of uncontrolled mercury emissions.

And,

Sithe will reduce it annual nitrogen oxide emissions by 15% (from 0.057 lb/MMBtu to 0.049 lb/MMBtu), and its annual sulfur dioxide emissions by 8% (from 0.060 lb/MMBtu to 0.055 lb/MMBtu).

Example #1:

Suppose DREF emits 3,000 tons of SO_2 in 2010. Under Option A, Sithe would be required to reduce SO_2 emissions at another source (or sources) within 300 km by 3,300 tons, or reduce NO_x emissions from those sources by 9,900 tons.

Example #2:

Suppose DREF emits 3,000 tons of SO_2 in 2010. Under Option A, suppose Sithe reduces SO_2 emissions at another source (or sources) within 300 km by 4,000 tons. In this case, Sithe would have created 700 tons of surplus SO_2 Emission Reduction Credits that it may use as it sees fit.

Example #3:

Suppose DREF emits 3,000 tons of SO_2 in 2010. Under Option B, Sithe would purchase its "regular" 3,000 tons of Title IV Allowances from any source, anywhere, plus up to 3,000 tons of SO_2 "Mitigation Allowances" from another source (or sources) within 300 km, provided that the total cost of the "Mitigation Allowances" does not exceed $3 million (in 2006 dollars). If each "Mitigation Allowance" cost at least $1,000, Sithe would be done.

Example #4:

Suppose Sithe obtains the necessary SO_2 reductions through a capital investment project (Option A), or purchases SO_2 Mitigation Allowances (Option B) at a cost of $2.7 million or less. Sithe would then contribute the maximum $300,000 to the environmental improvement fund because the total annual costs (allowances plus contribution) would be

below the $3 million cap. On the hand, if the mitigation allowances cost more than $2.7 million, Sithe would contribute the difference between the $3 million cap and the actual cost of the Mitigation Allowances (i.e., if allowance costs equal $2.9 million, the environmental improvement fund contribution would be $100,000).

XI-21

SOUTHERN UTE INDIAN TRIBE

October 11, 2006

Robert Baker
Air Division (AIR-3) USEPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Comments for the Desert Rock Energy Facility Proposed Prevention of Significant Deterioration Permit.

Dear Mr. Baker,

The Southern Ute Indian Tribe ("Tribe") appreciates the opportunity to provide comments on the United States Environmental Protection Agency's ("USEPA") proposed Prevention of Significant Deterioration ("PSD") permit for the Desert Rock Energy Facility ("DREF"). The DREF is a proposed 1500 MW coal-fired power plant to be constructed within a 50 mile radius of the Tribe's Reservation boundaries. The Tribe recognizes and respects the Navajo Nation's efforts in creating and building economic development projects on their lands, however, is concerned about the amount of overall energy development projects proposed for the Four Corners Region and the potential to adversely impact the Four Corners Region air quality. The Tribe is also concerned about how the approval of this project may affect further projects in the other adjacent jurisdictions of the Four Corners Region. Therefore, the Tribe is submitting the following comments on the proposed PSD permit for the proposed DREF.

1. Visibility Impairments

   The Tribe in its "Long Term Plan for the Reservation Air Program" ("LTP") recognizes the importance and value of the Reservation and Four Corners Region overall good visibility (1). A strategy to address potential visibility impairment issues to the Reservation and the nearby Class I areas, such as the Mesa Verde National Park and the Weeminuche Wilderness is included in the LTP. As a result, the Tribe is concerned about the visibility impact indicated in the Air Quality Impact Report by the proposed DREF, especially in light of the fact that the air quality models were developed with incomplete data inputs (2).

   At the DREF Public Information Meeting held at Fort Lewis College in Durango, CO on 9/14/06, the USEPA indicated that all Navajo Nation Title V sources, with the exception of the Four Corners Power Plant, were not included as modeling inputs. Source emissions were provided by emissions inventories provided by the New Mexico Environment Department. New Mexico is not responsible for nor does it maintain emissions inventories for the Navajo Nation. Two Navajo Nation

Title V sources are located in SE Utah in addition to numerous oil and gas area sources. All of these sources are within 20 - 30 miles of the Mesa Verde Class I area. According to the Air Quality Impact Report, the current air quality modeling results with the incomplete source inputs demonstrated that there would be adverse impact to 11 of the closest 15 Class I areas.

Recent air dispersion modeling conducted by the United States Bureau of Land Management and the United States Forest Service for the Northern San Juan Basin ("NSJB") Environmental Impact Statement ("EIS") predicts that the cumulative effect of current and future development in the NSJB and other oil and gas projects throughout the San Juan Basin will result in significant degradation of visibility at Mesa Verde National Park and the Weeminuche Wilderness Area. Due to the current oil and gas development in the area the modeling suggest that full development of the area could result in 36 to 61 days of degraded visibility in Mesa Verde National Park and 22 to 43 days of degradation in the Weeminuche (3). These predictions are based on maximum potential cumulative air quality impacts from all new oil and gas development including use of natural gas-fired wellhead engines (operating at a 9.6 g/HP-hour NOx emission rate). A more conservative model indicates that full development of the area could result in 10 to 31 days of degraded visibility in Mesa Verde National Park and 7 to 24 days of visibility degradation in the Weeminuche (3). These conservative predictions are based on maximum potential cumulative air quality impacts including reasonable foreseeable development incorporating the emitting source's well-head engines operating at a 2.0 g/HP-hour NOx emissions rate (3). These models include well-head emission limitations that are not yet USEPA-enforceable and exclude emissions from the proposed DREF. To include the DREF emissions into the modeling would likely cause the already increasing air pollution levels to rise further. The Tribe suggests the USEPA require Sithe Global to carefully revise all modeling to include the oil and gas current and proposed development in the Four Corners Region. This will more accurately address the potential impact that the DREF will have on visibility in this region's surrounding Class I areas.

2. Mitigation Strategy as Enforceable Permit Conditions

The Air Quality Impact Report indicates that the Federal Land Managers (FLM) have negotiated a "mitigation strategy" with Sithe Global to address potential visibility impairment issues caused by the proposed DREF (2). However, the USEPA is unwilling to include this mitigation strategy into the proposed PSD permit as federally enforceable permit conditions and would rather use another mechanism/agreement between the FLM's and Sithe Global to impose this strategy on the DREF (2). The Tribe feels that the only other option available to make the mitigation strategy enforceable permit conditions is through a Tribal Implementation Plan ("TIP") or a Federal Implementation Plan ("FIP"). TIP's and FIP's take much time to develop and the Tribe suggests that it is more prudent to capture the mitigation strategy requirements right now with the PSD permit, rather than waiting to rely on another mechanism with an uncertain

timeframe, especially with the impending visibility impacts identified in the DREF Air Quality Impact Report and the NSJB EIS.

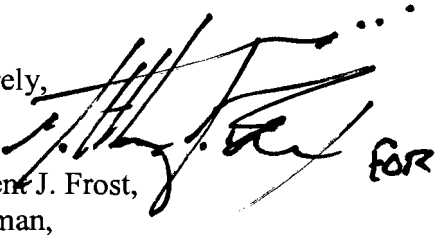
3. Integrated Gasification Combined Cycle ("IGCC") as a viable Best Available Control Technology ("BACT") alternative.

   The Tribe is concerned and would like to comment on the methods used to generate the BACT analysis summary for this PSD permit. The process for developing the BACT is to identify all candidate control technology options for emissions reductions specific to the unit under review (4). The Tribe is concerned that potentially useful recommendations found in the alternate operating methods section of DREF EIS were not reviewed as the DREF EIS was not fully completed at the time of drafting the PSD permit. The omission of this valuable information may result in a detrimental effect on the environment and the surrounding population. The Tribe suggests that the BACT analysis incorporate the alternate operating scenarios to be proposed in the DREF EIS.

   Additionally, the Tribe would like to comment on the exclusion of the IGCC power production process in the BACT analysis on the basis of "redefining the source". The Tribe suggests that IGCC be included into the BACT analysis. According to the federal definition of BACT this section requires evaluation of processes that will reduce the amount of emissions including innovative fuel combustion techniques. The IGCC is one of the most promising technologies in power generation that utilizes low-quality solid and liquid fuels and is able to meet the most stringent emissions requirements (5, 6). Although CO_2, a greenhouse gas, is not currently a regulated pollutant, IGCC plants emit less CO_2 than standard direct fire coal combustion facilities such as the DREF (5,6). As a result, with the inclusion of IGCC the overall contribution to greenhouse gas emissions by the DREF will be minimized. The inclusion of IGCC in the BACT analysis would not "redefine the source" as it is simply another more resourceful, lower polluting method of generating electricity from coal. Therefore, the Tribe suggests including IGCC as a viable BACT alternative for the DREF.

It is the goal of the Tribe's Air Quality Program to protect the air quality within the exterior boundaries of the Reservation. We appreciate your assistance on this matter and if you have any questions please contact Ethan Hinkley, Environmental Programs Division Head, or Christopher Lee, EPD Air Quality Program Manager, at (970) 563-0135.

Sincerely,



Clement J. Frost,
Chairman,
Southern Ute Indian Tribe

CC: Navajo Nation

References:

1. Lee, C., Temte, J.R., and Hinkley, E. "Long Term Plan for the Reservation Air Program." Southern Ute Indian Tribe Environmental Programs Ignacio, CO (2006).
2. Sithe Global Power, LLC; Desert Rock Energy Project. "Ambient Air Quality Impact Report (NSR 4-1-3, AZP 04-01).
3. U.S. Department of Interior Bureau of Land Management San Juan Field Office and the U.S. Department of Agriculture Forest Service San Juan Nation Forest. "Final Environmental Impact Statement, Northern San Juan Basin Coal Bed Methane Project." July 2006. <http://www.nsjb-eis.net/default.htm>
4. United State Environmental Protection Agency, Office of Air Quality Planning And Standards; "New Source Review Workshop Manual – Prevention of Significant Deterioration and Nonattainment Area Permitting". October 1990.
5. Sierra Club, "Integrated Gasification Combine Cycle (IGCC)", http://www.sierraclub.org/environmentallaw/coal/igcc.asp
6. American Electric Power "Integrated Gasification Combine Cycle (IGCC)" http://www.aep.com/about/igcc/

Ute Mountain Ute Tribe

OFFICE OF THE CHAIRMAN
P.O. Box JJ
Towaoc, CO 81334
(970) 564-5602
(970) 564-5709 Fax

United States Environmental Protection Agency
Region 9
Mr. Robert Baker, Air 3
75 Hawthorne Street
San Francisco, CA 94105

10/19/06

RE: Formal comments for the proposed Desert Rock Power Plant Prevention of Significant Deterioration (PSD) Permit.

Dear Mr. Baker,

The Ute Mountain Ute Tribe, a federally recognized Indian Tribe, respectfully submits the following comments regarding the PSD permit for the proposed Desert Rock power plant located on the Navajo Nation.

As an adjacent neighbor to the power plant and a recipient of new and existing impacts caused by the multiple major and minor sources of Hazardous Air Pollutants linked to the energy industry in the Four Corners region, the Ute Mountain Ute Tribe has specific concerns. These issues include the incomplete air modeling conducted for the Desert Rock PSD permit and the additional source of mercury to our air shed both of which negatively affect our Tribal membership and worsen local air quality including adjacent Class I air sheds that the Tribe enjoys.

During discussions with your EPA Air staff at local public information meetings the Ute Mountain Ute Tribe suggested that the modeling was incomplete based on a number of studies including the Air Dispersion modeling conducted by the Farmington, NM BLM for the Northern San Juan Basin Environmental Impact Statement (attached). The EIS analyzed only emissions from new oil and gas development and did not include emissions from other sources in the area. The dispersion modeling predicted that full development of the area could result in 15-32 days of degraded visibility in Mesa Verde National Park (the Ute Mountain Ute Tribe shares a political boundary and geographical area with MVNP) and 11-25 days of degradation in the Weeminuche Wilderness Area (considered to be a traditional Tribal Cultural Property and part of the Brunot Treaty Area). Both areas are considered Class I air sheds.

Studies like this, contrary to what the Desert Rock PSD state, indicate that new sources in the area will affect the area's air quality including that over the Ute Mountain Ute Reservation. EPA's modeling suggesting otherwise is incorrect.

The Tribe understands that the PSD process looks at existing major and minor sources only. With that in mind, EPA compiled incomplete information when it did not include all of the Title V sources in their PSD modeling. According to US EPA modeling staff only one of 14 Title V sources on the Navajo Nation was included in the PSD analysis as well as an incomplete review of the 36 Title V sources on the Southern Ute Indian Reservation. Although it is reasonable to suggest that not all of these sources could impact the same air shed that the proposed Desert Rock facility could it must be assumed that more of these major sources should have been included in the PSD modeling.

The Ute Mountain Ute Tribe respectfully requests that the modeling that was completed for the PSD permitting process be revisited and include sources that truly represent the current conditions of the local air shed.

The Tribe is also concerned about other contaminants. Mercury contamination in the form of methyl-mercury has been confirmed in area reservoirs where Tribal members face fish consumption warnings due to potential health impacts caused by mercury. The source of mercury, according to many federal studies, includes coal fire powered plants in the Four Corners Region.

Although final Federal regulation of mercury is forthcoming, EPA should require the proponents of the proposed Desert Rock power plant to implement Best Available Control Technologies (BACT) for mercury control. Representatives of Sithe Global Power LLC have admitted that they have designed the facility to control 70% to 80% of mercury. They should be held to a higher standard.

All parties involved in this permitting process understand that mercury will be regulated in order to reach US President Bush's Clear Skies Initiative. The Ute Mountain Ute Tribe requests that EPA requires the proposed facility to design emissions technology in the proposed plant that reduces mercury emissions now rather than aiming at standards set for the year 2020.

Fair and accurate representation of the current conditions of the air shed in the region is obviously important to the health and welfare of the Ute Mountain Ute Tribe and its environment. It is also important to understand that this project will not be the last energy related project for the area that may have impacts on air quality. It is EPA's responsibility to ensure that the PSD process and any future permitting of the proposed facility are conducted in an accurate, equitable and scientifically supportable manner so that future energy projects are represented fairly.

If you have any questions regarding the Tribe's position on this matter please contact:

Tom Rice
Director, Ute Mountain Environmental Department
PO Box 448
Towoac, CO 81334
970 564 5432

Sincerely,

Manuel Heart

Manuel Heart
Chairman, Ute Mountain Ute Tribal Council

CC: Priscilla Bancroft, Superintendent, USDI Bureau of Indian Affairs, Ute Mountain Agency
Peter Ortego, UMUT General Counsel
The Honorable John T. Salazar